

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

(Alameda and Berkeley, California)

KAISER FOUNDATION HEALTH PLAN, INC.

Employer

and

Case 32-RC-5191

COMMUNICATION WORKERS OF AMERICA

Petitioner

DECISION AND DIRECTION OF ELECTION

The Employer, Kaiser Foundation Health Plan, is a non-profit corporation providing prepaid health care services to individuals and groups. It is one of three related entities that constitute “Kaiser Permanente,” the other two being Kaiser Foundation Hospitals and The Permanente Medical Group, Inc.¹ The Petitioner, Communication Workers of America, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent the approximately 185 clerical employees working at the Employer’s Human Resources Service Center (the HRSC), which is located in Alameda, California, but which also has a satellite record storage room in Berkeley, California, where two of the HRSC employees are stationed. The specific job classifications that the Petitioner seeks to represent are as follows: Processing Clerk, Administrative Specialist, Human Resources Analyst, and Human Resources Representative.

The Employer, in opposing the petition, contends that the Board’s Health Care Rule² applies to the employees at issue here and, in reliance on that Rule, argues that the only appropriate unit would be a residual one consisting of all of the approximately 1630 unrepresented business office clerical employees working at all facilities in the Employer’s Northern California Region, which essentially covers the entire northern part of California.

¹ These two entities did not enter an appearance at the hearing.

² 29 C.F.R. §103.30

The Employer also argues that, should the Health Care Rule not apply, the proposed unit would still be inappropriate, because the employees lack a distinct community of interest from the other unrepresented business office clericals working at the other Kaiser Permanente facilities in the Employer's Northern California Region. Thus, the Employer argues that even under traditional representation principles, the only appropriate unit would consist of all unrepresented business office clerical employees throughout the Employer's Northern California Region.³ Additionally, the Employer argues in reliance on the Board's overruled decision in Levine Hospital of Hayward, 219 NLRB 327 (1975), that the petition should be dismissed because, as the Employer asserts, this case involves a multi-facility situation in which one or more unions already represent some of an employer's business office clericals in a unit or units that do not conform with the Board's Health Care Rule, thereby precluding a non-incumbent union, such as Petitioner, from petitioning to represent the remaining unrepresented business office clericals.

The Petitioner counters by arguing that the Board's Health Care Rule does not apply to the administrative facility of the Employer that is at issue in this case; that even if the Health Care Rule does apply, the petitioned-for unit is an appropriate unit; that the traditional community of interest principles should apply here; and that the petitioned-for unit is presumptively appropriate because the Human Resources Service Center is a separate and functionally distinct operation.

Although the foregoing constitute the major unit-related disputes in this case, other issues include whether the Employer's Assistant Benefits Accounting Coordinators should be included in the unit and whether, as the Employer contends, the Human Relations Analysts assigned to the Employer's Work Absence Management (WAM) Team should be excluded from the unit as confidential employees.⁴ In addition to these unit-related issues, there are also issues in this case regarding the intervenor status of two other unions: Office & Professional Employees Union, Local 29 and Service Employees International Union, Local 250. Local 29 argues that it has a collective-bargaining agreement with the Employer that

³ The Employer also states that if the regional unit were found not be the only appropriate unit, then the smallest possibly justifiable appropriate unit would consist of the 544 unrepresented Kaiser clerical employees in Alameda County.

⁴ The Employer also takes the position that the Assistant Benefits Coordinators are business office clerical employees and notes that the Union does not seek to include them in the petitioned for unit.

already covers the employees in the petitioned-for unit and therefore constitutes a bar to the instant petition. Local 250 bases its intervenor claim on the fact that it has a collective-bargaining agreement with the Employer covering a unit of non-professional employees in the Employer's Northern California Region, and that this unit includes some business office clericals. Local 250 also contends that the Kaiser Permanente employers have a pattern of region-wide bargaining units, and, therefore, Local 250 takes the position that "the probable unit is all non-professionals throughout Kaiser's Northern California region."

In addressing each of the foregoing issues, I have concluded, as discussed below, that the Health Care Rule does not apply in this case, that the petitioned-for unit is appropriate, that the Assistant Benefits Coordinators are business office clericals who should be included in the unit, that the Human Resources Analysts in the Work Absence Management team are not confidential employees and should be included in the unit, and that the Board should conduct an election in this case.⁵ Also, as discussed below, I find that the evidence does not support Local 29's claim that it represents employees in the petitioned for unit or that its collective-bargaining agreement with the Employer is a bar to an election in this case, and I therefore have determined that Local 29 does not have intervenor status and that it will not be included on the ballot in this case.⁶ Likewise, I find that Local 250's collective-bargaining agreement does not warrant granting Local 250 intervenor status in this case, and I will not include it on the ballot in this case.

To provide a context for my discussion of the issues, I will first briefly give an overview of the operations that are in dispute in this case, and in particular, I will describe the nature of the relationship among the Employer, Kaiser Foundation Hospitals, and the Permanente Medical Group, Inc.; the work performed by the employees in the petitioned-for

⁵ I also reject the Employer's Levine doctrine argument. I am bound to apply existing Board law, and the decision in Levine was reversed by the Board in St. Mary's Duluth Clinic Health System, 332 NLRB 1419 (2000) and Crittenton Hospital, 328 NLRB 879 (1999). Thus, whatever applicability the Levine doctrine may once have had in multi-facility cases such as this one, I will not apply the Levine doctrine to the facts in this case.

⁶ Local 29 also argues that the Region should place this case in abeyance pending an arbitration between Local 29 and the Employer regarding whether employees in the petitioned-for unit are already covered by the collective-bargaining agreement between the Employer and Local 29. However, it is well established that the determination of questions concerning representation are matters for decision by the Board, because they involve the application of statutory policy, standards and criteria, not contract interpretation. Marion Power Shovel Company, Inc., 230 NLRB 576, 577-78 (1977); Hershey Foods Corp., 208 NLRB 452 (1974); St. Mary's Medical Center, 322 NLRB 954 (1997).

unit; and the work performed by the other unrepresented business office clerical employees in the residual unit sought by the Employer. Finally, I will present the facts, case law and reasoning that support my conclusions in this matter.

OVERVIEW OF OPERATIONS

The Kaiser Permanente Organizations

As noted above, the Employer, together with Kaiser Foundation Hospitals and The Permanente Medical Group, Inc., constitute what is referred to as “Kaiser Permanente.” The Permanente Medical Group, Inc. is a professional corporation of physicians, which operates the outpatient clinics, emergency rooms and clinical laboratories in the acute care hospitals operated by Kaiser Foundation Hospitals and which operates free-standing medical office buildings and outpatient clinics. Kaiser Foundation Hospitals operates numerous acute care hospitals in several states, including 18 hospitals in the Employer’s Northern California Region.

The Employer enters into contracts with groups and individuals to provide medical and hospital services. The Employer obtains these services pursuant to its contracts with Kaiser Foundation Hospitals and The Permanente Medical Group, Inc., who in turn require that the Employer provide them with certain administrative services, including human resources services. The Employer’s operations in California are divided into two geographic regions: the Southern California Region and the Northern California Region, which is the region at issue in this case. The Employer’s Northern California Region has eight administrative service areas: six are geographically based; of the remaining two, one consists of the Employer’s three appointment and advice call centers,⁷ and the other consists of the Employer’s Northern California Regional Offices and nearby administrative facilities.⁸ In carrying out its various functions, the Employer operates administrative office building in various cities in northern California.

Over 43,000 employees employed by the three Kaiser Permanente entities in northern California are represented by unions in 13 collective-bargaining units. Some of these

⁷ These call centers are located in San Jose, Vallejo and Sacramento, California. Unless otherwise noted, all cities and counties referred to in this decision are located in the state of California.

⁸ The Employer’s Regional Offices administrative service center includes the Regional Offices in Oakland, the various other administrative facilities located in Berkeley, Livermore, San Leandro, and downtown Oakland, and the Member Services Call Center located in Stockton.

bargaining units are comprised of employees working for more than one Kaiser Permanente entity. Most of these bargaining units are region-wide; that, is, they include some employees at all or many of the Employer's facilities in the Northern California Region. Local 250 represents a unit of approximately 23,710 service and maintenance, technical, and business and office clerical employees who work in various facilities throughout northern California, but it does not represent all of the employees in those classifications throughout the Northern California Region. Local 29 represents a unit of approximately 2,692 office and clerical employees in Alameda County and at two facilities in Contra Costa County, but does not represent all of the business office clericals in Alameda or Contra Costa counties. Neither Local 250 nor Local 29 represents employees at the Employer's facility in Alameda, which is known as the Human Resources Service Center ("HRSC"), and it is HRSC employees, including the two HRSC employees working in a Berkeley records storage facility, who are the subject of the petition in this case. In all, the unit sought by the Petitioner consists of about 185 employees.

Including the petitioned-for employees, there are approximately 1630 unrepresented business office clerical employees in the Kaiser Permanente Northern California Region, and many of these unrepresented clerical employees work in facilities in which other clerical employees are represented by Local 250 and/or Local 29. These unrepresented employees, like the represented business office clerical employees, carry out a variety of typical clerical duties, including typing, computer work, copying, faxing, filing, handling incoming and outgoing mail, telephone communications, filling out forms, correcting paperwork or data entry errors, making appointments, and similar tasks. The business office clericals work on a wide variety of issues, including member eligibility, payroll, worker's compensation, recruitment and other customer or personnel related issues. In the Kaiser Permanente facilities located in Alameda County, Local 29 represents almost 2700 business office clerical employees, while approximately 545 business office clerical employees in Alameda County are not represented by a union. The Employer's other unrepresented business office clerical employees who work in facilities in Alameda County work in the following job families: Accounting and Finance, Administrative Support, Scientific Research, Customer Service, and Facilities Research.

The Human Resources Department

The HRSC is part of the Employer's Human Resources Department. The headquarters for the Employer's Human Resources Department for the Northern California Region is located at 1950 Franklin Street in Oakland. The Human Resources Department provides human resource services not only to the Employer's northern California operations, but also to the northern California operations of Kaiser Foundation Hospitals and The Permanente Medical Group, Inc. The person in charge of the Human Resources Department is the Employer's Vice President of People. Reporting to the Vice President of People are the directors of six different function-based departments: Work Force Planning Recruitment and Retention, Labor Relations, Diversity, Compensation, Learning and Development, and Human Resources Quality Service and Efficiencies. The directors of these departments are responsible for each Kaiser Permanente facility in the Northern California Region, including the HRSC facility in Alameda, California. Reporting to the directors are the Human Resources leaders, who work on the operational side of the Human Resources Department. Reporting to the Human Resources leaders are Human Resources Consultants, Recruitment Coordinators, Recruiters and administrative staff. From the record, it appears that most, if not all of the Human Resources Leaders, and their respective teams, are located not at the 1950 Franklin Street facility; rather, the Human Relations Leaders and their respective teams are dispersed amongst the Employer's geographic sub-regions, call centers, and Regional Offices.⁹

These teams work with local managers and supervisors with respect to grievance handling, investigations, dispute resolution, contract interpretation, EEO compliance, recruitment and other labor relations related issues. The Employer' evidence shows that the business office clerical assigned to these teams, such as certain recruitment personnel, are not represented by a union.

The Human Resources Service Center

In 1996, the Employer made significant changes in its Human Resources Department, including the establishment of the HRSC. Prior to 1996, the human resources functions for Kaiser Permanente employees were performed in local personnel departments located within,

⁹ The record shows that the Regional Offices Team Leader is responsible for the Kaiser Permanente facilities in Livermore, the Richmond Optical complex, the call center in Stockton, the Berkeley complex, and four facilities in Oakland.

or in facilities adjacent to, the Kaiser Permanente medical centers and office buildings. Each facility maintained its own personnel records. The employees in these various personnel departments were not represented by a union.

As part of the 1996 changes, the Employer decided to consolidate many of its personnel functions into the HRSC located in Alameda, California.¹⁰ The goal was to make the HRSC a centralized point of service for Kaiser Permanente employees and managers who were seeking assistance or information with regard to routine personnel-matter transactions. The HRSC is a separate administrative unit that has its own budget.¹¹ Unlike the other Human Resources Department departments and offices, which service the Northern California Region exclusively, the HRSC services the employees and managers for both the northern and southern California regions of the Kaiser Permanente employers. As the centralized point of contact for the Kaiser Permanente employees in all of California, the HRSC employees respond to approximately 582,000 phone calls and process approximately 1.2 million documents each year. Most of the telephone queries are from Kaiser Permanente employees, supervisors and managers.

The individual in charge of the HRSC is Diane Thurin, who holds the title of Director HR Services Center/Director North Employee Benefit Services. Reporting to Thurin are two Assistant Directors, Paula Jennings and Sonya Gavazza. The HRSC is divided into various units, teams and other subdivisions, most of which have employees in the classifications covered by the petition. The teams are supervised by Team Leaders, who report directly to one of the Assistant Directors or to Thurin.¹² At least some of the teams also have a Team Leader – Content.¹³

¹⁰ Many of the original employees at the HRSC transferred from other positions within the Kaiser Permanente organization. These transfers were not automatic; rather, the positions were posted region wide, and the employees who had held the various local personnel positions had to apply for the HRSC positions.

¹¹ In at least some of its records, the Employer uses numbers, rather than place names, to identify its different locations. Because the two HRSC employees who work in Berkeley are considered part of the HRSC, at least some of the Employer's records show the two Berkeley-based HRSC employees as working at the Alameda facility.

¹² The Employer takes the position that the Team Leaders are supervisors within the meaning of the Act, based on the evidence regarding the Team Leaders' authority in hiring, disciplining and evaluating employees. Although the Petitioner did not agree to the stipulation at the hearing, it did agree in its brief. Based on the agreement of the parties, and the evidence supporting their positions on the Team Leaders' status, I find that the Team Leaders are supervisors within the meaning of the Act, and that they are excluded from the unit.

¹³ The employees in this position serve as resource people for the team members, and some also help interview new applicants. Nether party takes the position that these employees are business office clerical, and neither

The HRSC units, teams and other subdivisions have specialized tasks. The employees in the Occupational Injury Unit receive reports of injuries at the various facilities, and they input the information from those reports into a computer-tracking system called the Risk Management System.¹⁴ These employees also generate reports regarding those employee injuries.

Another of the Employer's units is the North and South Operations Unit, which includes the following teams: North Pay, South Pay, North Phones, South Phones, South Wage Audits, South Transfers, Regional Transfers, North and South Seniority Team, and North and South New Hire/Termination Team. The employees on the respective Pay Teams respond to questions and complaints about employee pay, such as problems with a direct deposit authorization or the Employer's failure to deduct union dues. The employees on these teams also make routine changes in the Employer's personnel database, such as changes in the address or tax status of employees.

The employees on the Seniority Team are responsible for updating and applying seniority language for union employees, while the employees on the Wage Audit Team resolve more complex wage disputes by auditing employee records and correcting problems where needed. The New Hire/Termination/ Interregional Transfer team inputs all new hires into the system, processes terminations, and processes transfers from other Kaiser Permanente regions. The Work Absence Management Team employees oversee employee leaves and are responsible for Family Medical Leave Act paperwork.

The Document Management Center is comprised of four units: the Mail Room, the Records Management Team, the I-9 Team, and the Distribution Team. The Mail Room processing clerks open, stamp, sort, scan and index incoming mail. They also monitor all incoming faxes and direct them to the appropriate recipients. The Records Management Team handles subpoena requests that come to the HRSC. They search through electronic and hard copy personnel files to locate and copy documents requested by subpoena. They also locate and copy documents requested by employees and Kaiser Permanente's legal department. Two members of this team work in Berkeley, where the HRSC stores some of its

party seeks to include them in the unit. I therefore conclude that these employees are not business office clerical employees, and they are excluded from the unit.

¹⁴ The union-represented and the unrepresented business office clerical employees in the Employer's Workers Compensation Department, which is located in Oakland, work with the data entered by the HRSC employees.

personnel files, and the Petitioner seeks to include them in the HRSC unit. The I-9 Team is responsible for auditing and tracking employment eligibility documents in compliance with United States Immigration laws. Finally, the HRSC Distribution Team mails out enrollment packets and forms to employees.

The Benefits Administration Unit is comprised of a North Benefits Team, a South Benefits Team, a Retirement Team, and a Benefits Billing Department. The North and South Benefits Team employees process benefits transactions such as enrollments and adding or deleting beneficiaries. The Retirement Team processes enrollments into benefits plans for retired employees. The Benefits Billing Department is responsible for paying outside benefits administrators and sending out payment books to retired employees.

The Petitioner is not seeking to represent certain employees of the Benefits Administration division; namely, the Benefits Accounting Coordinators and Assistant Benefits Accounting Coordinators. The Employer takes the position that the Assistant Benefits Accounting Coordinators are clerical employees and should be included in whatever unit is found appropriate. The Assistant Benefits Accounting Coordinators do not respond to employee inquiries, but are responsible for mailing coupons to retirees, reconciling membership issues, collecting payments, and sending the payments to the accounting department.

With regard to the employees assigned to the Training Team, the Budget and Finance Unit, the Operations Desk, the Technology Unit, Quality Assurance, Customer Service Liaison and the Web Coordinator Unit, neither party is seeking to include them in the unit. There is no evidence that any of the employees in these subdivisions are in job classifications sought by the Union. I also note that, according to the Employer's witnesses, none of the employees in these HRSC subdivisions are business office clerical employees. The Petitioner has proffered no evidence or argument to the contrary.

As stated above, the Petitioner seeks to represent the employees at the HRSC who are in the following job classifications: Processing Clerk, Administrative Specialist, Human Resources Analyst, and Human Resources Representative.¹⁵ The Processing Clerks work in several departments at the HRSC and are primarily responsible for opening and distributing

¹⁵ The petition also seeks the position of "HR Benefits Admin," but apparently this position does not exist, and therefore I have not included it in the unit.

mail. The Administrative Specialists function as receptionists and perform miscellaneous duties as assigned, including such tasks as operating the fax machine and printers. The Human Resources Representatives function as frontline customer service representatives in the Human Resources Center. In addition to answering telephone queries, the HR Representatives are responsible for identifying and correcting the paperwork and data entry errors, or other errors, that led to the customer inquiry, such as a denial of benefits or an inaccurate paycheck. They are also responsible for entering data into the Employer's respective computer systems, scanning and faxing documents, making personnel changes in the computer systems, calling employees and their supervisors in order to verify information needed to process transactions, maintaining spreadsheets of employees' work absences, and mailing documents and forms to employees. Depending on the subject matter addressed by the unit to which they are assigned, HR Representatives must also be conversant with the applicable Employer personnel policies, collective-bargaining agreement, and/or statutory guidelines.¹⁶

The Human Resources Analysts are responsible for training and assisting the Human Resources Representatives. Like the Human Resources Representatives, they respond to employee and managerial inquiries and complaints, particularly those inquiries that are too complex for the Human Resources Representatives. According to their job description, in responding to these inquiries and complaints, the Human Resources Analysts must be able to provide sound interpretation and application of the Employer's human resources policies, collective-bargaining agreements, and statutes.¹⁷

The HSRC Employees Assigned to the Employer's Berkeley Facility

As part of its operation, the HRSC maintains the personnel files of 100,000 current and former Kaiser Permanente employees. Although many files are now electronically

¹⁶ Although there is evidence that at least one Human Resources Representative has a college degree and is working on a post graduate degree, applicants for the Human Resources Representative position are required only to have a high school degree or equivalent related work experience, the ability to navigate mainframe-based data entry systems, one year of customer service experience, and a general content knowledge in at least one of the applicable sub-fields in the field of human resources.

¹⁷ Although some Human Resources Analyst have had extensive human resources managerial/supervisory experience prior to being employed by the Employer, the job requirement is that applicants have a high school diploma, experience in high volume transaction processing, strong interpersonal and conflict resolution skills, the ability to navigate mainframe-based data entry systems and experience in at least two of the applicable sub-fields in the field of human resources.

maintained, the HRSC still must maintain a substantial amount of paper files. Due to a lack of space at the Alameda facility, many of the hard-copy personnel files were moved to a warehouse facility in Berkeley in 1997. The Berkeley HSRC records room is situated in a building complex that also houses the following Kaiser Permanente departments: Bio Medical Engineering, Construction Services, Optical Laboratory and Regional Laboratory.

There are two HRSC employees working at the Berkeley site. One of the employees is a Human Resources Representative, and one is a Human Resources Analyst. Both of these employees are part of the HRSC Record Management Team. These two employees are responsible for locating and copying requested documents from the hard-copy personnel files housed in the Berkeley warehouse. The same function is performed by the Records Management Team employees at the Alameda HRSC site with respect to the files that are stored there. The supervisor of the two Berkeley HRSC employees is located at the HRSC facility in Alameda, and that supervisor does not supervise any of the other employees at the Berkeley site.

The two Berkeley HRSC employees are the only employees assigned to work in the HRSC records room at the Berkeley facility, and they have minimal, incidental contact with the other Kaiser Permanente employees located at that facility. Thus, the HRSC employees may speak with the other employees when they punch the time clock that is used by all of the Berkeley facility employees, or when documents were directed to the wrong department at the facility.¹⁸

The Employer's Centralized Operations

The evidence shows that the Employer has a highly centralized administrative structure and many standardized terms and conditions of employment. As noted above, the Employer's Human Resources Department is responsible for labor relations matters for each of the Kaiser Permanente facilities in the Northern California Region. The Human Resources Department has established standardized policies and procedures that cover most aspects of the Kaiser Permanente Northern California Region employees' employment, and most of these policies and procedures apply to both union and non-union employees.¹⁹ These policies

¹⁸ I also note that one of the Berkeley HRSC employees is on the Berkeley facility's Emergency Response Team, which includes non-HRSC employees at the Berkeley facility.

¹⁹ These policies and procedures include such varied topics as telephone use, threat management, drug and

and procedures are included on a website for the Northern California Region, and many of them are also set forth in the Employer's Orientation Manual, which is distributed to new employees at their regional orientation session.

The Human Resources Department also provides managers throughout the Northern California Region with training concerning how and when to take disciplinary action and provides the managers with forms and sample language to use in disciplinary matters. The HRSC managers may decide on their own authority when to issue oral and written warnings, although there is evidence that some consult with the Human Resources Consultant assigned to their service area before issuing written warnings. Similarly, prior to suspending or discharging an employee, the HRSC managers would typically seek the Human Resources Consultant's recommendation. According to one of the Human Resources Consultants, the managers have the authority to make the final decision on their own, but typically will follow her recommendation.²⁰ Unrepresented employees who have been disciplined, may use the Northern California Region's dispute resolution process, which may include a hearing before an adjustment board. The Adjustment Board, which is comprised of senior managers from throughout the Northern California Region, has the authority to sustain, reverse or revise the disciplinary action by the facility management.

The Kaiser Permanente employers also have common policies with regard to benefits that are provided to all unrepresented Kaiser Permanente employees in the Northern California Region. Thus, the unrepresented employees receive the same employment

alcohol use, discipline, leaves of absence, severance benefits, employee assistance, jury duty, confidentiality, etc. While most workplace rules and policies apply to all Kaiser Permanente employees throughout northern California, individual facilities are permitted to have some site-specific policies that do not contradict the region wide policies. The HRSC has some HRSC only policies, such as its dress code.

²⁰ One of the HRSC's Assistant Directors, Sonya Gavazza, testified that she was aware of one disciplinary situation in which the Human Resources Consultant assigned to the HRSC had "changed" the level of discipline from that which had been recommended. Later, Gavazza testified that the Consultant had only "recommended" that the employee not be discharged, and that the employee was not discharged. Gavazza did not recall the specifics of what had occurred, but did state that of the ten disciplinary situations she was aware of, only on that one occasion had the HRSC not disciplined the employee as originally planned. From Gavazza's testimony it appears that the Human Resources Consultant does not actually overrule the HRSC managers' disciplinary decisions. Rather, it appears that the managers will consider and rely on the Consultant's recommendations, and based on the information provided by the Consultant have, on at least one occasion, changed their initial decision to terminate an employee based on the recommendation of the Consultant. Paula Jennings, an Assistant Director at the HRSC, testified that she did not know of any instances in which an HRSC manager had consulted with the Human Relations Department, and the employee was not ultimately suspended or discharged as sought by the manager.

benefits, including such benefits as medical and dental coverage, disability and life insurance plans, pension, and defined contribution plans.

The HRSC does have some benefits that are not available to other Kaiser Permanente employees. For instance, the HRSC is located in an office park, which offers benefits to all employees employed at the office park. They include discounted bus passes, a shuttle service, discounted golf fees, access to a childcare facility, and recreational opportunities.²¹ The HRSC employees are given a vest or t-shirt with the HRSC logo to wear to work on designated days. The HRSC hosts a “holiday luncheon” each year at the Alameda facility, which is attended exclusively by HRSC employees. I also note that vacation scheduling for HRSC employees is arranged by department to ensure adequate staffing. Thus, HRSC employees compete only with other HRSC employees when requesting vacation leave.

The unrepresented employees throughout the Northern California Region share common wage scales. However, these wage scales are not set wage rates for each classification; rather, the wage scales include a range of wage rates. The HRSC managers, like managers at other facilities, have considerable discretion in assigning the actual wage rate a new employee receives within the wage scales, although the wage rate they give must not be above the “anchor” rate, which is one of the levels in the wage scale. To go above the anchor rate, the manager would need clearance from the Compensation Department. Similarly, the managers have discretion giving employees a wage increase, and may give an employee a wage increase up to the “High Target” rate without approval from higher management.²² The Employer presented several exhibits showing the wage range of unrepresented business office clericals, including those at the HRSC. The range for the yearly wage rate for a Processing Clerk is \$20,700 at the “Salary Threshold” level; \$22,800 at the “Low Target” level; \$25,900 at the “Anchor” level; \$28,000 at the “High Target” level; and \$31,100 at the “Highly Competitive” level. The range for a Human Resources Representative is \$30,400 at the “Salary Threshold” level; \$33,400 at the “Low Target” level; \$38,00 at the “Anchor” level. \$41,000 at the “High Target” level; and \$45,600 at the “Highly Competitive” level. The range for a Human Resources Analyst is \$36,000 at the “Salary Threshold” level; \$39,600 at

²¹ The office park also sponsors summer entertainment, sports teams and a corporate Olympics team, all of which are available to the HRSC employees.

²² The HRSC manager must keep his/her overall payroll costs within the HRSC budget limits.

the “Low Target” level; \$45,000 at the “Anchor” level; \$48,600 at the “High Target” level; and \$54,000 at the “Highly Competitive” level. Thus, the HRSC managers have the authority to vary a new employee’s wage level from about \$5000 to \$9000 per year, and they have similar authority with regard to wage increases.

Job openings at all Northern California Region facilities are posted region wide, and employees at the facility where the opening occurs receive no hiring preference over employees at the other Northern California Region facilities. Similarly, Kaiser Permanente has a region-wide Redeployment & Transition Program, which provides qualified employees a preference in hiring with regard to open comparable jobs in the region. Applicants for positions at the HRSC apply through the Employer’s region-wide recruiting department, which is located in Oakland. The Employer’s recruitment personnel receive and review the applications and forward the suitable applications to HRSC management. HRSC management interviews the prospective employees and decides which employees to hire.

Each new hire in the Kaiser Permanente organization, including the HRSC employees, attends a one-day orientation session, which apparently is held at a Kaiser Permanente facility within the employee’s administrative service area, and which often includes employees from multiple facilities within that area. Evidently, the HRSC employees had their orientation at the Employer’s Regional Offices in Oakland. All post-orientation training of HRSC employees takes place at the HRSC facility and is conducted by HRSC personnel.

Employee Interaction and Interchange

Because of the nature of the HRSC’s work, there is interaction between many of the employees at the HRSC and employees at other Kaiser Permanente facilities. First, because the HRSC is the centralized point of contact for Kaiser Permanente employees and managers who have inquiries/complaints regarding their paychecks, benefits, seniority, and other such matters, Kaiser Permanente employees and managers are, in effect, the customers who are served by the HRSC employees. Accordingly, there is regular contact between certain HRSC employees and certain Kaiser Permanente employees and managers who are working in facilities throughout California. Second, many HRSC employees interact with other Kaiser Permanente employees, supervisors and managers as part of the HRSC customer problem-

solving process, and in sharing work-related information.²³ For example, employees in the petitioned for unit who work in the Occupational Injury Unit input employee claim form data into the Employer's Risk Management System, and that data is then used by the Workers Compensation Department employees at one of the Employer's Oakland facilities.²⁴ Similarly, the unit employees at the HRSC input some data into a common payroll system, which is used by the Payroll Department employees at the one of the Employer's Oakland facilities.²⁵ For example, based on data input by HRSC employees, Payroll Department employees generate blank time cards that are then returned to the HRSC Mail Room, where the cards are sorted and distributed to the Kaiser Permanente facilities in the Northern California Region.²⁶ Employees from the HRSC and Payroll Departments also have additional communications regarding payroll matters and regarding changes in the payroll system. I also note that there is evidence that the HRSC employees are responsible for maintaining relevant personnel data that is necessary for audits by the Joint Commission Accreditation of Health Care Organizations, which decides whether or not to accredit the Kaiser Permanente medical centers.²⁷

Another example of HSRC interaction with Kaiser Permanente employees at other facilities is that the Human Resources Representatives and Analysts in the HRCS Operations Department sometimes have to respond to telephone inquiries from the Recruiting Department employees at other Kaiser Permanente facilities, including business office clerical employees who want to verify that the HRSC employees have processed the paperwork regarding an employee who was hired or promoted.²⁸ HSRC Human Resources Representatives and Analysts may also receive telephone inquiries from the employees at the Stockton Member Services Call Center. Such calls would occur when a Kaiser Permanente

²³ Although it appears that such contacts happen regularly, it is not clear from the record how many telephone inquiries the clerical employees at the HRSC receive from employees at the other Kaiser Permanente facilities, nor is it clear how many HRSC business office clerical employees receive such inquiries.

²⁴ It appears that most of the clerical employees in the Workers Compensation Department are represented by Local 29.

²⁵ The business office clerical employees in the Payroll Department are represented by Local 29.

²⁶ The record does not indicate how and by whom the payroll cards for the Southern California Region are processed.

²⁷ With regard to these records, it is not clear whether the employees who would use the HRSC records, or who would communicate with the HRSC employees about the records, are represented by a union.

²⁸ The business office clerical employees who work on recruitment are not represented by a union.

employee seeking information at the Call Center raises a medical coverage issue that the Call Center cannot answer on its own, or when the employee who contacts the Call Center raises HRSC issues in addition to Call Center issues.

A final example of employee interaction involves the Human Resources Analysts in the Work Absence Management team. When there is a problems arising from an employee's failure to return to work after the employee's leave of absence has expired, the Employer refers the matter to what it calls a SWAT team.²⁹ The SWAT Team consists of a Human Resources Consultant, a Benefits Specialist, an in-house counsel, a Transitional Work Coordinator, a Regional Compliance Department representative, the manager of the HRSC Work Absence Management Team, the Human Resources Analyst responsible for the geographic service area in which the employee in question was employed, and possibly other managers. The SWAT Team members have a teleconference at least once a month. The conference calls may last from two to eight hours. During conference calls, the participants review the entire process related to an employee's leave of absence issues and determine what the facts are. As a result of the information discussed during these conference calls, the managers of the employee, the Human Resources Consultant and the Human Relations Department will discuss whether the employee should be permitted to return to work or to be terminated. The SWAT Team does not make the decision to terminate or reinstate an employee, and it appears that the SWAT Team does not make recommendations to terminate or reinstate an employee.

In addition to the foregoing evidence of employee interaction, the record shows that there has been some employee interchange between the HRSC and other Kaiser Permanente facilities. First, I note that the Employer introduced into evidence a lists of each of the employees the Employer states transferred into the HRSC from another Kaiser Permanent facility, and a list of each of the employees who transferred from the HRSC to another Kaiser Permanente facility, since about 1997. Of the approximately 170 employees who were permanent transfers into the HRSC from another Kaiser Permanente employer, about 100 transferred into clerical positions. Of the approximately 160 employees who transferred out of the HRSC to other Kaiser Permanente facilities, about 110 were business office clerical

²⁹ One SWAT Team deals with employee issues for the Northern California Region, and the other deals with employee issues for the Southern California Region.

employees. The record does not establish how many of these transfers were involuntary. As some of the transfers out of the HRSC apparently occurred in connection with the September 13, 2003 termination of the HRSC night shift, at least a portion of the transfers were probably involuntary. Finally, I note that only about four of the transfers into HRSC business clerical positions took place since December 10, 2001, which is two years prior to the start of the hearing in this case. Similarly, only 24 of the transfers out of the HRSC since December 10, 2001, involved business office clericals.

In addition to the foregoing evidence regarding permanent transfers, there is also evidence of some temporary interchange between the HRSC and other Kaiser Permanente facilities. For a couple of months during at least the last two summers, five to six employees from the Member Services Call Center in Stockton were temporarily assigned to the HRSC, because the workload was low at the Stockton facility. The employees were all volunteers. While at the HRSC, the Stockton employees worked along side and were assisted by HRSC employees. Because of the commute, the Stockton employees only worked six hours per day, instead of the eight hours worked by the HRSC employees. The evidence does not make it clear whether any of the employees who worked at the HRSC in the summer of 2002 also worked there the next summer, nor does the evidence establish that the Employer has a plan in place to have Stockton employees continue to work at the HRSC during the summers.

The HRSC sent a few Human Resources Representatives and Analysts to the Kaiser Permanente Oakland and Richmond Medical Centers for a couple of short-term projects. Both projects took place about two years ago. On one of the projects, five HRSC employees were sent to the Richmond Medical Center to assist in preparations for an upcoming outside audit. These employees, each of whom volunteered for this project, were assigned to pull specified documents from the medical center's files. The assignment lasted about two weeks. For the other project, two HRSC employees were temporarily assigned to the Oakland Medical Center for one-day. These HRSC employees who volunteered for this project were assigned to assist recruitment employees in completing I-9 forms,³⁰ or in helping the recruited employees complete those forms. The HRSC employees had, as part of their HRSC duties, worked on an I-9 form audit and thus were familiar with that form. The Employer also

³⁰ The I-9 forms are necessary for establishing that an employee is eligible to work in the United States.

presented evidence that, approximately a year ago, an HRSC Team Leader and a Human Resources Analyst spent one-day training managers in the Sacramento administrative service area regarding leaves of absence issues. There is no evidence of any particular plans for HRSC employees to be temporarily assigned to another facility in the future.³¹

ANALYSIS

Intervenor and Contract Bar Issues

Local 29 appeared for part of the hearing in this case and sought intervenor status based on its collective-bargaining agreement with the Employer. Local 29 asserted that, by virtue of the recognitional provision of that agreement, including the unit description, it already represents the HRSC employees and, therefore, that the agreement should serve as a bar to the petition. However, the evidence presented at the hearing demonstrates that the employees at the HRSC are not specifically referenced in Local 29's collective-bargaining agreements and have never been part of Local 29's bargaining unit. Prior to the formation of the HRSC, all human resources/personnel employees had been excluded from Local 29's unit. Thereafter, following the HRSC's creation, Local 29 and the Employer reached agreement on two collective-bargaining agreements, one in 1999 and one in 2000. The HRSC employees were not included in either of those collective-bargaining agreements, and it appears that during the bargaining for those two agreements, Local 29 did not even seek to include the HRSC employees in the unit. I also note that the most recent collective-bargaining agreement between Local 29 and the Employer was entered into more than three years ago.³²

Accordingly, I find that Local 29's contract does not bar the processing of this petition. See United Parcel Service, 303 NLRB 326 (1991), wherein the Board held that accretion cannot apply to a group of employees who have historically been excluded from the bargaining unit. Given that Local 29's intervenor status was based solely on its collective-bargaining

³¹ There is evidence that certain employees from the Employer's Employee Program Offices are occasionally assigned to the HRSC for brief periods when there is a high priority retirement that is to be processed and there is missing information. The Employee Program Office employees, who normally work in Oakland, then spend some time at the HRSC looking for the missing information. This research work is similar to the type of work that is also performed by Human Resources Representatives and Analysts. However, the record is not clear regarding the job classification of the Oakland-based employees who worked at the HRSC, nor is it clear that any of them were business office clerical employees. I note that the Employer does not rely on this evidence in arguing that there is interchange among the Kaiser Permanente facilities.

³² The current collective-bargaining agreement between Local 29 and the Employer went into effect on October 1, 2000. The petition in this case was filed on October 1, 2003.

agreement with the Employer, which does not include the employees in the petitioned-for unit, and given, further, that the proposed HRSC unit is an appropriate unit, I find that Local 29 has not established a basis for being granted intervenor status, and it will not be included on the ballot in this case.

Local 250 made a brief appearance at the hearing and sought intervenor status based solely on its collective-bargaining agreement with the Kaiser Permanente employers, which covers a non-professional employees unit, including some business office clericals. Local 250 does not claim that it represents any of the HRSC employees, and it does not argue that there is a contract bar. Although the record includes the collective-bargaining agreement on which Local 250 relies, Local 250 introduced no evidence and raised no arguments in support of its intervenor claim, other than referencing the fact that the Kaiser Permanente employers have a pattern of multi-facility and region wide bargaining units. As Local 250 does not represent any employees in the proposed HRSC unit, and as I have found that unit to be an appropriate one, I conclude that Local 250 has not established its right to intervenor status, and I will not include it on the ballot in this case.

The Employees in the Petitioned for Unit Are Business Office Clerical Employees

The Employer contends, and I agree, that the HRSC employees covered by the petition are business office clerical employees. Their work does not involve patient care, and the HRSC is a separate administrative facility in which no patient care is performed. The HRSC was created to be the contact center for Kaiser Permanente employees throughout California regarding such matters as employee payroll, leave and other benefits. Moreover, the employees in the proposed unit typically perform such traditional clerical duties as answering the telephone, filing and retrieving documents, opening and distributing the mail, in-putting data into the computer, and similar clerical-type tasks. Although the Human Resources Representatives and Analysts perform more complex work in responding to employee inquiries and complaints, the Board has recognized that the skill levels of hospital business office clericals have become more advanced and that such work is business office clerical work. St. Luke's Episcopal Hospital, 222 NLRB 674, 676 (1976). and see §103.30 (c), Appropriate Bargaining Units In The Health Care Industry, 54 FR 16336, 16347 (1989).

The Health Care Rule

As noted above, the Employer argues that the Board's Health Care Rule,³³ which identifies eight different bargaining units that are deemed appropriate for acute care hospitals, including business office clerical employees, applies in this case and requires a single residual unit consisting of all business office clerical employees employed by all three Kaiser Permanente entities at approximately 60 facilities throughout all of northern California. However, having reviewed the Rule and the cases interpreting it, as well as the evidence adduced at the hearing, I conclude that the Rule does not apply in this case. Alternatively, I find that, even if the Rule were deemed to apply to this human resources administrative facility, it is not practicable to require, as sought by the Employer, a single residual unit of all business office clerical employees employed by all three Kaiser Permanente entities at approximately 60 facilities throughout all of northern California.³⁴

In finding the Rule to be inapplicable, I rely on the following: First, the Rule, on its face, applies only to acute care hospitals, whereas here, the employees at issue are not employed by an acute care hospital, and their offices are not located in an acute care hospital. The Employer attempts to address that requirement by arguing that, because the Kaiser Permanente employers as a whole are responsible for interrelated aspects of the operation Kaiser Foundation Hospitals' acute care hospitals, each of the Kaiser Permanente employer's ancillary administrative facilities, including the HRSC, fall within the Rule. In addition, according to the Employer, the commentary to the Rule envisions that clerical employees might work off-site from a hospital and still fall within the Rule. To be sure, the Board in its Second Notice of Proposed Rulemaking (NPR II), 53 F.R. 33900, 53925 (1998), recognized that business office clericals may be covered by the Rule despite being located in a separate building from an acute care hospital. However, the Board's reference to business office clericals being housed in separate buildings came in a discussion about why business office clericals warranted a separate unit from certain other hospital employees, and the Board noted that business office clericals are sometimes located in separate floors or separate wings of a hospital or in a separate building. Thus, while the Board's language supports an argument

³³ §103.30 Appropriate Bargaining Units In The Health Care Industry, 54 FR 16336, 16347 (1989).

³⁴ "Where there are existing non-conforming units in acute care hospitals, and a petition for additional units is filed pursuant to sec. 9(c)(1)(A)(i) or 9(c)(1)(B), the Board shall find appropriate only units which comport, insofar as practicable, with the appropriate unit set forth in paragraph (a) of this section." §103.30 (c), Appropriate Bargaining Units In The Health Care Industry, 54 FR 16336, 16347 (1989).

that the Board was not foreclosing the application of the Rule to an acute care hospital's business office merely because it was located in a separate building, the Board did not state or indicate that the Rule would automatically apply to any business office clerical, located in any facility, who performed at least some work for an acute care hospital, particularly where, as here, the acute care hospitals are owned and operated by a separate employer.

Moreover, the circumstances in this case do not warrant applying the Rule to the type of administrative office at issue here. Thus, the HRSC is not in, or nearby, an acute care hospital, and no patient care services are offered at the HRSC. Nor is the HRSC even an adjunct administrative building for an individual hospital or a grouping of hospitals; rather, it is the human resources contact center of a pre-paid health plan that has administrative offices, and covers health plan members, throughout the state of California.

In sum, the fact that the Employer, like a subcontractor, has taken on the human resource work for the separate Kaiser Permanente companies, which themselves operate the hospitals and employ the doctors throughout the state of California, does not thereby convert HRSC itself into an acute care hospital. Therefore, I find that the Rule does not apply in this case. See, e.g. Kaiser Foundation Health Plan of Colorado, 333 NLRB 557, 558 (2001) (holding that the Rule does not apply in analyzing a petition for a bargaining unit of technical employees of an eye care department of an employer entity that is almost identical to the employer in this case.)

In any event, even if the HRSC were considered to be an integral part of an acute care hospital, I would still find that the Rule does not apply in this case, for the Rule was designed to avoid proliferation of units within an acute care hospital and was not intended to cover multi-location, multi-employer entities as are present in this case. Thus, as the Board stated in its Second Notice of Rulemaking, “* * * the proposed rule does not purport to address the issue of the appropriateness of a single facility when an employer owns a number of facilities, which the Board will continue to address through adjudication.” Second Notice of Proposed Rulemaking (NPRII) above, at 33902, citing Manor Healthcare Corp., 285 NLRB No. 31 (August 6, 1987). I also note that the Board continues to hold that a single-facility presumption applies in acute care hospital cases, which further shows that the Rule was aimed at preventing the proliferation of units at any one hospital, not at requiring region-wide or employer-wide units. St. Luke's System, Inc., 340 NLRB No. 139 (2003).

Additionally, as noted above, it would not be practicable to find that the residual unit proposed by the Employer is the only appropriate unit. The Kaiser Permanente employers' unrepresented business office clerical employees work in approximately 60 different facilities located throughout the Kaiser Permanente employers' Northern California Region. These employees are not all employed by the Employer; rather, some work for Kaiser Foundation Hospitals and others work for The Permanente Medical Group, Inc. Furthermore, these unrepresented business office clerical employees in the Northern California Region typically work in facilities where Local 250 and/or Local 29 already represent some of the business office clerical employees. Thus, the employees in these facilities have much more in common with the represented employees at their own facilities than they do with the HRSC employees. The situation is quite different at the HRSC, where none of the business office clericals are represented by a union. Finally, I note that the evidence shows that not all of the Employer's bargaining units are Region-wide. In these circumstances, I conclude that it would not be practicable to impose the huge region-wide unit proposed by the Employer.

Based on the above referenced facts and case law, I reject the Employer's argument that pursuant to the Rule and/or policies underlying the Rule, the only appropriate unit is a region-wide residual unit of business office clerical employees.³⁵ Therefore, I next address the parties' opposing positions regarding the applicability of the single-employer presumption and find, for the reasons discussed below, that, regardless of that presumption's applicability in this case, the unit sought by Petitioner is nonetheless appropriate under an analysis of the Board's traditional community of interest factors.

Community of Interest Factors

The dispute in this case regarding the applicability of the single-facility presumption focuses on what significance should be accorded the fact that two of the HRSC employees sought for inclusion in the unit work in a storage room at an employer facility in Berkeley.³⁶

Petitioner, as would be expected, contends that little significance should be accorded that fact, given that the Berkeley employees constitute such a small percentage of the overall unit sought by Petitioner and given, further, that those employees have particularly strong ties to

³⁵ See St. Mary's Duluth Clinic, 332 NLRB 1419, 1421 (2000) (discussing the Rule in terms of the number of units that could exist "at any particular facility.")

³⁶ As noted above, the single facility presumption does apply in acute health care cases as well as in regular community of interest cases. St. Luke's System, Inc., 340 NLRB No. 139 (2003).

the Alameda facility which, in contrast to all the Employer's other unrepresented business office clerical employees working outside that facility, makes their inclusion in the petitioned-for unit unavoidable. The Employer, on the other hand, advocates a strict reading of the single-facility presumption by arguing that it should not apply here, because the petition, on its face, seeks to include employees located at two different facilities, namely, the approximately 185 employees at the Alameda HRSC facility and the two HRSC employees working at the HRSC's storage room in Berkeley. Whatever the merits of those opposing positions, I find it unnecessary to decide the applicability of the single-facility presumption, because, as discussed below, the evidence as a whole is sufficient to establish that, even if the unit sought by Petitioner should be considered multi-location, it is an appropriate unit.

In cases involving a proposed multi-location unit that does not include all of an employer's facilities, the Board will find the proposed multi-facility appropriate if the evidence establishes that the employees in the proposed unit share a community of interest that is distinct from the excluded employees at the employer's other locations. For the reasons set forth below, I conclude that the employees in the proposed unit do share a sufficiently distinct community of interest from the Employer's unrepresented business office clerical employees at its other facilities. See Stormont-Vail Healthcare, Inc., 340 NLRB No. 143 (2003) and Alamo Rent-A-Car, 330 NLRB 897 (2000).

To determine whether a proposed multi-facility unit shares a sufficiently distinct community of interest to constitute an appropriate unit, the Board evaluates the following factors:

- 1) the employees' skills and duties;
- 2) the terms and conditions of employment;
- 3) the extent of centralized control of management and supervision;
- 4) the employee interchange and functional integration;
- 5) the geographic proximity of the facilities;
- 6) the bargaining history; and
- 7) whether the proposed unit conforms to an administrative function or grouping of the Employer's operations.

With regard to the first factor, the employee skills and duties, the evidence shows that the skill level required by the HRSC business office clericals to perform their duties varies considerably, depending on their job classifications. The Processing Clerks and Administrative Specialists perform standard business office clerical duties, such as processing

and delivering mail, answering the telephone, filing documents, making copies and using a computer. Thus, their skills and duties are similar to those of many of the unrepresented business office clerical employees employed at the other Northern California Region facilities. The Human Resources Representatives and Analysts, in addition to performing some traditional clerical work, must also respond to complaints and questions raised by Kaiser Permanente employees and managers regarding problems related to pay, leave, benefits, and related matters. As such, the Human Resources Representatives and Analysts must find the appropriate documents or computer files; determine what errors, if any, were made; correct those errors; and deal effectively with the Kaiser Permanente employee or manager who made the inquiry or complaint. The Human Resources Representatives and Analysts must also have had some prior human resources experience and must have some knowledge of the federal laws or collective-bargaining agreement that relates to the work in their department, team or unit. The work of these employees appears to be somewhat more complex and different in nature than that performed by most of the Kaiser Permanente business office clerical employees. However, it also appears that there are at least some unrepresented business office clerical employees at other Kaiser Permanente facilities, such as recruitment personnel and the Customer Service Call Center Representatives, who have somewhat comparable troubleshooting skills and duties. Thus, the nature of the relatively unique skills and duties of the Human Resources Representatives and Analysts is insufficient to establish that the HRSC employees share a distinct community of interest, although, as indicated, that lack of distinctiveness is based in large part on a comparison to certain, isolated members of the Employer's unrepresented business office clerical employees at other facilities, as opposed to a general comparison with all of such employees throughout the northern California unit urged by the Employer.

With regard to the employees' terms and conditions of employment, the evidence shows that all of the unrepresented employees are covered by a region-wide wage scale system, which sets five wage rates for each job classification. Local managers, including the HRSC managers, may not give an employee one of the top two wage rates in the employee's job classification without permission from the Human Resources Department. However, the local managers do have the discretion of determining which of the job classification's three lowest wage rates will be given to the employee, and thus the HRSC managers may vary an

employee's starting wage rate by about five to nine thousand dollars per year. Because local managers may significantly vary the wage rates of employees in the same or comparable job classifications, the evidence does not establish that the Employer has a uniform, centrally-controlled wage rate for employees throughout the Northern California Region. Similarly, although the bulk of the benefits enjoyed by the unrepresented employees are the same throughout the Northern California Region, the HRSC employees do receive some unique benefits. Thus, these employees receive discounts on bus passes and golf fees, a subsidized bus shuttle, an HRSC T-shirt, a holiday luncheon, and access to a child care facility operated by the business park in which the HRSC is located.³⁷ Accordingly, I conclude that the lack of uniform region-wide wage rates and the extra benefits shared by the HRSC employees support a finding that the HRSC business office clericals share a distinct community of interest.

Turning to the third factor in the Board's community of interest test, namely, the centralized nature of the employer's operations and the amount of autonomy given to local managers, I find that, although the record reflects a strong degree of centralized operations on the part of the Employer, it also demonstrates that the HRSC's local management exercises a significant degree of local control over many important terms and conditions of employment of the HRSC employees. Thus, on the one hand, the evidence establishes that the Employer has a centralized management structure, whereby its Northern California Region has been divided into eight administrative service areas, in which the HRSC is only one of several facilities in the Regional Offices administrative service area, and under which structure a single Human Resources Department is responsible for labor relations policies throughout the Northern California Region.

On the other hand, the evidence shows that the HRSC operates as a separate administrative grouping within the Regional Offices administrative service area, and has a separate HRSC budget. The two HRSC employees in Berkeley are included in the HRSC administrative grouping and budget, and some of the Employer documents included in the record list the two Berkeley-based HRSC employees as being located at the Alameda HRSC facility. The HRSC employees, including the two Berkeley-based HRSC employees, are

³⁷ I also note that the HRSC annual leave list is separate from the leave lists at other Kaiser Permanente facilities, so the employees there are only competing with other HRSC employees for choice vacation times.

supervised by the HRSC Director, the two Assistant Directors and Team Leaders. These managers and supervisors are located at the Alameda HRSC facility, and they have authority only over the HRSC employees. Although the Human Resources Department does some initial screening of applicants, the onsite HRSC supervisors and managers conduct employee interviews and make hiring decisions for the HRSC. The HRSC managers also make the decisions regarding discipline and discharges, although, with regard to suspensions and discharges, the managers do typically consult with a Human Resources Consultant who is located at another facility. As noted above, the HRSC managers set employees' vacation schedules and have a significant amount of discretion to set the employees' initial wage rates and to determine the amount of their pay increases. The HRSC is also responsible for conducting the on-going training of its own employees. Based on all of the foregoing, I conclude that this evidence strongly weighs in favor of finding that the business office clerical employees at the HRSC have a distinct community of interest from the unrepresented business office clerical employees at the other Kaiser Permanente facilities.

Applying the next community interest factor, employee interchange and functional integration, I find that, although the evidence of interchange is a somewhat neutral factor with regard to the appropriateness of finding a separate HRSC unit, the mixed evidence regarding functional integration does support a finding that the HRSC has a distinct community of interest. With regard to employee interchange, there is evidence of permanent transfers into and out of the HRSC as well as evidence of occasional temporary assignments of other employees to the HRSC and of HRSC employees to other facilities. In particular, the evidence shows that since the creation of the HRSC in about late 1996, approximately 100 business office clerical employees transferred into the HRSC from other Kaiser Permanente facilities. However, this includes the employees who transferred to the HRSC during late 1996 and early 1997 when the HRSC was first being established. Permanent transfers to a newly established facility, however, are given "little weight" when evaluating employee interchange. Alamo Rent-A-Car, 330 NLRB 897, 898 (2000). More significant is the evidence that only about four of the permanent transfers into HRSC business clerical positions took place in the two years prior to the start of the hearing in this case. All of these transfers were the result of employee requests to be transferred to open positions at the HRSC.

Since 1996, there were also approximately 110 business office clericals who transferred out of the HRSC to other Kaiser Permanente facilities. About 24 of those employees transferred out of the HRSC since December 10, 2001. All of these transfers were the result of employee requests to be transferred to open positions at other Kaiser Permanente facilities. In any event, although there has been a significant number of permanent transfers involving HRSC business office clericals, the Board has stated that permanent transfers are generally a less important indication of interchange than temporary transfers. See Deaconess Medical Center, 314 NLRB 677 n.1 (1994).

As regards temporary assignments of HRSC employees to other facilities, the evidence shows them to have been rare and limited to only a few such facilities. About two years prior to the hearing in this case, on two occasions, employees from the HRSC performed work at other Kaiser Permanente facilities for a short period of time. One employee went to a facility in Richmond for one day to ensure that the facility's I-9 immigration papers were in order. Five employees went to a facility in Oakland for a couple of days to assist in the preparations for an outside audit. There is also evidence that, about a year prior to the hearing in this case, an HRSC business office clerical and a Team Lead worked for one day in a Sacramento facility. There is no evidence indicating that these types of extraordinary situations are likely to be repeated, much less that they will be repeated on a regular basis.

The most significant evidence of interchange is that during the last two summers, five or six employees from the Employer's Stockton call center temporarily worked at the HRSC facility in Alameda. While at the HRSC, the Stockton employees performed the work of HRSC employees. The Stockton-based employees volunteered to come to Alameda in the summer months of 2002 and 2003, when work was slow at their own facility. They worked six-hour days, unlike the HRSC employees who work eight-hour days. It is unclear from the record whether the same employees came to the HRSC both summers. The evidence also does not establish that the Employer has a plan in effect to have Stockton employees work at the HRSC in the future.³⁸ Aside from the foregoing, there is little, if any, other evidence in

³⁸ As neither party argues that the Stockton employees who were temporarily assigned to work at the HRSC should be included in the unit, and as the evidence is not sufficient to establish that these employees have a right to be included in the unit, I have not included them in the bargaining unit.

the record of interchange, aside from the employees from the Employer's Employee Program Offices, discussed above at footnote 31, who may not even be clerical employees and are not cited by the Employer as examples of interchange involving business office clerical employees.

With regard to functional integration, the Employer argues that the Kaiser Permanente employers are all joined in a common function of providing healthcare to the Employer's members. The Employer also notes that by the nature of its human resources work, the HRSC is inherently integrated with the rest of the facilities in the Northern California Region. Thus, the Employer points to the evidence showing that HRSC employees work on portions of numerous human resources projects that are also worked on by employees at other Kaiser Permanente facilities. For example, the HRSC employees do some work on matters related to generating and distributing time cards that are prepared and processed by the Payroll Department at another Kaiser Permanente. Similarly, the HRSC employees input initial injury data into a computer and into reports that are then used by the Workers Compensation Department, which is located at another facility. The Employer also presented evidence showing that some other HRSC employees have fairly regular contacts with employees and managers at other Kaiser Permanente facilities; although, the evidence does not show what percentage of the HRSC employees have repeated contacts with employees at other facilities. Thus there is substantial evidence of numerous work related contacts between HRSC employees and employees and managers at other facilities.

Although the evidence demonstrates that there is a significant degree of functional integration between the HRSC and other Kaiser Permanente facilities, there is also substantial evidence showing that the HRSC has a distinct function within the Kaiser Permanente administrative system. The HRSC was created to play a specialized role within the Kaiser Permanente system; namely, to be the single point of contact for all Kaiser Permanente employees and managers throughout the state of California with regard to questions and complaints concerning wages, leave status, benefits, seniority, and similar matters. The Employer's other administrative facilities have different functions such as setting appointments, resolving customer benefits issues and labor relations matters. Moreover, the Employer's other administrative facilities in the Northern California Region address issues related to the Northern California Region, while the HRSC responds to inquiries and

complaints from Kaiser Permanente employees and managers state wide. In these circumstances, I conclude that, despite the evidence of some employee interchange and interaction, the evidence showing the HRSC's distinct role and its statewide coverage, demonstrate that it has a unique function that strongly supports a finding that the HRSC employees have a distinct community of interest.³⁹

Application of the next factor, geographic proximity, is somewhat complicated by the peculiarities of the HRSC's arrangement involving the stationing of two HRSC employees at an employer facility in Berkeley, which the HRSC uses as a supplemental storage space for personnel files. When taking that facility into account, the record shows that it is one of a number of facilities in the Employer's own proposed unit that are within about 7 to 30 miles of the HRSC, including some that are closer to the HRSC than is the Berkeley facility. However, the two employees at the Berkeley facility constitute a minor percentage of the petitioned-for unit, with all the remaining employees within that petitioned-for unit being located at the HRSC facility in Alameda. Therefore, I am disinclined to find that the requested inclusion of those two employees in the unit, which I view as an unavoidable necessity on the part of Petitioner, given those employees' exceptionally close ties to the other HRSC employees, neutralizes what is otherwise a factor weighing heavily in favor of the petitioned-for unit, which otherwise consists entirely of HRSC employees located in the HRSC's own separate facility. That disinclination is bolstered by the fact the alternative unit advocated by the Employer would stretch across the Employer's entire Northern California Region. Accordingly, I conclude that the evidence of geographic proximity weighs in favor

³⁹ See Visiting Nurses Association of Central Illinois, 324 NLRB 55 (1997), wherein the Board concluded that, despite various factors supporting a multi-facility unit, including numerous permanent transfers and the short-term temporary assignment between facilities of about 25 employees during a recent 12-month period, the employer had not rebutted the single-facility presumption. In support of this conclusion, the Board noted that the interchange was minimal and that the employees were separately supervised. I note, however, that in a recent case, the Board found that there had been extensive interchange, even though there had been no significant interchange involving the employees at the single facility sought by the Petitioner. St. Luke's Health System, Inc., 340 NLRB No. 139 (2003). Nonetheless, I find that case to be distinguishable for a number of reasons, including the fact in this case, unlike in St. Luke's, the evidence does not establish that there was extensive interchange among the Employer's other facilities. Moreover, the employees at issue in St. Luke's were essentially fungible, given that the employees at all of the facilities in question performed the same work and were routinely moved amongst those facilities. Further distinguishing that case is the fact that the petitioned-for facility there had only a few employees and that the alternative multi-facility unit was geographically compact and highly centralized, whereas here, the HRSC managers have significantly more authority than did the managers in St. Luke's, and the HRSC is a large, relatively independent facility with a unique function, unlike the satellite facility in St. Luke's.

of a finding that the HRSC has a distinct community of interest.

As regards the application of the bargaining-history factor, I find that it is not a decisive factor in this case. Although the Employer has numerous region-wide collective-bargaining agreements, it also has a single facility unit and it has Local 29's unit, which includes specified facilities in Alameda and Contra Costa counties. Moreover, the Employer has not had a region-wide unit of all business office clericals, and in fact has two units that include business office clericals: one is Local 29's unit, and the other is Local 250's unit that includes many, but not all, non-professional employees and business office clerical employees located in various facilities throughout the Northern California Region.

The final community of interest category concerns whether the proposed multi-facility unit conforms with a separate administrative grouping of the employer. Here, although the HRSC is in the Employer's Regional Offices administrative service area, the Alameda HRSC and the two HRSC employees in Berkeley constitute a separate administrative grouping, with its own budget and its own separate supervision. I therefore conclude that the administrative grouping evidence strongly supports the finding that the HRSC has a distinct community of interest.⁴⁰

In sum, for the reasons discussed, I conclude that the evidence regarding the community of interest factors supports the conclusion that the HRSC employees share a sufficiently distinct community of interest to find that a unit limited to the HRSC unit, including the two HRSC employees in Berkeley constitutes an appropriate unit. In reaching that conclusion, I particularly rely on the separate supervision/management of the HRSC, the distinct function of the HRSC, the geographic proximity of the employees within the petitioned-for unit, and the fact that the HRSC is a separate administrative grouping of the Employer's operations. See Stormont-Vail Healthcare, Inc., 340 NLRB No. 143 (2003); Alamo Rent-A-Car, 330 NLRB 897 (2000); Visiting Nurses Association of Central Illinois, *supra*.

The Composition of the Unit

The Board will normally find units limited to all business office clerical employees at a facility to be appropriate, L.M. Berry & Co., 198 NLRB 217 (1972), and as noted above, I

⁴⁰ I note that the Local 29 unit, and an all Alameda County unit would not conform to the Employer's administrative groupings.

have found that the four classifications included in the proposed units are business office clerical employees. However, there remains a dispute as to whether the three Assistant Benefits Accounting Coordinators who work in the HRSC's Benefits Billing Department are business office clericals. The Petitioner stated at the hearing that it did not wish to represent them, but it did not explain the basis for its position unit.⁴¹ The Employer does not agree to the exclusion of the Assistant Benefits Accounting Coordinators and argues that these employees are business office clerical who must be included in a business office clerical unit. The evidence shows that these employees are responsible for paying third party administrators, reconciling memberships, researching discrepancies, sending out payment coupon books to retired employees, collecting payments and forwarding them to the accounting department. In light of the above, I conclude that the Assistant Benefits Accounting Coordinators are business office clericals who share a community of interest with all of the other business office clericals at the HRSC. I shall therefore include them in the unit. As no party claims that any other employees at the HRSC are business office clericals, I find that the unit in this case will include the HRSC Assistant Benefits Accounting Coordinators, Processing Clerks, Administrative Specialists, Human Resources Representatives and Human Resources Analysts.⁴²

Confidential Employee Status

The Employer contends that the Human Resources Analysts on the Work Absence Management Team must be excluded from any appropriate unit because they are confidential employees. The normal duties of these Human Resources Analysts are to maintain the applicable documentation of the facts concerning each employee's leave status, process the necessary paperwork, and answer employee and managerial queries relating to leave. On occasion, they may also participate periodically in conference calls conducted by managers

⁴¹ The Union also took the position that it does not wish to represent the two Benefits Accounting Coordinators and sought a stipulation to exclude them from the unit. The Employer agreed that Benefits Accounting Coordinators should be excluded from the unit, based on the fact that they are not business office clericals. Based on this stipulation, I conclude that the Benefits Accounting Coordinators should be excluded from the unit.

⁴² Neither the Petitioner nor the Employer seeks the inclusion of those employees at the HRSC who work in the Training Team, Budget and Finance Unit, Technology Department, Quality Assurance, Customer Service Liaison and Web Coordinator Unit. The Employer presented some evidence that these departments do not employ any business office clericals. As there is no evidence or argument raised by either Party indicating that some of the employees in these departments should be included in the unit, I find that they should be excluded from the unit.

and in-house counsel, which are held to discuss problems that arise when Kaiser Permanente employees have expired leaves of absence. Although there was testimony that these conference calls occur at least monthly, there was no testimony to establish how frequently any particular Human Resources Analysts is called on to participate. Nor is it clear what role these employees play during the conference calls, or how frequently each of the 24 Human Resources Analysts in the Work Absence Management Team actually participate in one of these telephone conferences. Moreover, the testimony regarding what was discussed during the conference calls was not clear or specific, and there was no testimony regarding what was said during any particular conference call. Although there is testimony establishing that personnel decisions are subsequently made by the managers based on the information discussed during the conference calls, the personnel decisions themselves are not made during these calls. Given the normal job duties of the Human Resources Analysts, it appears likely that they are called upon merely to find the applicable records and then to report on the contents of those records relating to an employees' leave of absence.

Confidential employees are those who “assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies with regard to labor relations.” Ladish Co., 178 NLRB 90 (1969). Moreover, “in applying the standards for determining whether a person is a confidential employee, the Board has always considered the three indicia of ‘formulate, determine, and effectuate’ in the conjunctive.” Greyhound Lines Inc., 257 NLRB 477 (1981), citing Holly Sugar Corp., 193 NLRB 1024 (1971). The absence of any one of these indicia will preclude a finding of confidential status. Weyerhaeuser Co., 173 NLRB 1170 (1969). Finally, since a finding of confidential status deprives an employee of important representational rights, the party asserting confidential status has the burden of proof. Crest Mark Packing Co., 283 NLRB 999 (1987).

Here, the Employer has not provided details regarding the authority and duties of the participants of the telephone conferences, and therefore it cannot be determined whether any or all conference calls involved an individual who formulates, determines, and effectuates management policies with regard to labor relations. Moreover, even if at least some of the other participants in these conference calls are persons who have that authority, the evidence does not establish that the Human Resources Analysts are assisting and acting in a confidential capacity to those managers during these conference calls. I note that merely

having access to confidential information and providing that information to managers who may take disciplinary action based on the information is not assisting and acting in a confidential capacity. See, *Ladish*, supra; *S.S. Joachim & Anne Residence*, 314 NLRB 1191 (1994); and *Lincoln Park Nursing Home*, 318 NLRB 1160 (1995). In these circumstances, I conclude that there is insufficient evidence to establish that the Human Resources Analysts on the Work Absence Team assist and act in a confidential capacity in relation to these managers and that they are properly included in the unit. See, e.g. *Waste Management de Puerto Rico*, 339 NLRB No. 39 (2003). As the Employer has not met its burden on this issue, I conclude that the Human Resources Analysts on the Work Absence Team are not confidential employees and they will be included in the unit.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Assistant Benefits Accounting Coordinators, Processing Clerks, Administrative Specialists, Human Resources Representatives, and Human Resources Analysts employed at the Employer's Human Resources Service Center in Alameda California and at the Employer's facility on Second Street in Berkeley, California; excluding all other employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented by COMMUNICATION WORKERS OF AMERICA. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-521, on

or before **April 7, 2004**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (432) 567-8911. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **April 14, 2004**. The request may **not** be filed by facsimile.

Dated at Oakland California this 5th day of April, 2004.

/s/ William A. Baudler
William A. Baudler
Acting Regional Director
National Labor Relations Board
Region 32

32-1285

Classification Index Numbers

393-2000	420-4600	440-6775	470-8500
420-1218	420-9000	440-6750-6750-6700	470-8800
420-2900	440-1720-0133	470-0100	
420-4000	440-1760-1900	470-672	